IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 619 of 1988

with

CIVIL APPLICATION No 2575 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAPOOR DEVIERWALA HOTELS

Versus

SURAT TEXTILE MARKET CO-OP SHOPS & WAREHOUSING SOC, LTD

Appearance:

1. Civil Revision Application No. 619 of 1988
   MR DD VYAS with MR DHAVAL VYAS &
   MR DB JAGIRDAR for Petitioner No. 1
   MR SM SHAH with MS KJ BRAHMBHATT for Respondent No. 1
   NOTICE SERVED for Respondent No. 2
2. Civil Application No. 2575 of 2002
   M/S.VYAS ASSOCIATES for Petitioner No. 1
   MS KJ BRAHMBHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/10/2004

ORAL JUDGEMENT

The present Civil Revision Application is filed by the petitioner under Section 29 (2) of the Bombay Rent Act, challenging the order passed by the District Judge, Surat, on 9th March, 1988 in Revision Application No.3/1982, by which the learned District Judge has allowed the revision application filed by the present respondents and dismissed the Standard Rent Application No.1026 of 1976 filed by the present petitioner.

2) The petitioner herein moved an application under Section 11 of the Rent Act for fixation of standard rent of the suit premises. At that time, a stand was taken by the respondents herein before the trial Court that there is no relationship of landlord and tenant between the parties and therefore, the application for fixation of standard rent is not maintainable.

3) The trial Court has negatived the contention of the respondents and came to the conclusion that the Rent Act is applicable and there is a relationship of landlord and tenant between the parties. Subsequently, the trial Court has fixed standard rent of the suit premises at Rs.3518.86 ps. per month and for furniture and fixtures and other equipments at Rs.1759.20 ps. per month and in all standard rent is fixed at Rs.5278.06 ps., by the trial Court inclusive of taxes.

4) Against the aforesaid order of the trial Court, the respondents preferred a revision application under Section 29 (3) of the Bombay Rent Act before the District Court. As stated earlier, the District Court has allowed the said revision application by coming to the conclusion that since the relationship of tenant and landlord is not established between the parties, the Bombay Rent Act is not applicable and therefore, there was no question of fixation of standard rent by the trial Court.

5) The District Court, however, gave an alternative finding to the effect that in case the Rent Act is applicable, then the standard rent is fixed at Rs.1.25 ps. per sq.ft.

6) It is the aforesaid order of the District Judge which is challenged by the present petitioner-original

applicant of standard rent application by way of present revision application.

7) This revision application is filed under Section 29 (2) of the Bombay Rent Act. At the time of hearing of this revision application, Mr.Vyas, learned advocate for the petitioner has fairly conceded that this revision application under Section 29 (2) of the Rent Act is not maintainable before this Court as the original proceedings arises out of fixation of standard rent and the suit is not for recovery of possession. Therefore, he submitted that this revision may be permitted to be converted into a revision under Section 115 of C.P.C.

8) Mr.Shah, learned Counsel appearing for the respondent submitted that this revision may not be permitted to be converted into a Civil Revision Application under Section 115 of C.P.C., especially when no such request was made by the petitioner for all these period, even though this revision is pending before this Court since 1988. Mr.Shah has submitted that even otherwise if this revision is permitted to be converted into a Civil Revision Application under Section 115 of C.P.C., such second revision would not be maintainable in view of the judgement of the learned Single Judge reported in 1996 (1) GLH 606. He, therefore, submitted that the request of the petitioner for permitting him to convert this revision application into a revision application under Section 115 of C.P.C., may not be granted.

9) So far as request regarding converting this revision to one under Section 115 of C.P.C., is concerned, in my view, the petitioner should be permitted to convert this Civil Revision Application into a Civil Revision Application under section 115 of C.P.C. As this revision is pending before this Court since long, it is not proper to ask the petitioner to file fresh Civil Revision Application under Section 115 of C.P.C., as labelling of the matter is not of much significance and this Court can exercise its powers under Section 115 of C.P.C., in order to find out whether the subordinate Court has committed any jurisdictional error while passing the impugned order.

10) Under these circumstances, this revision, even though it is branded as revision under Section 29 (2) of the Rent Act is treated as a revision under Section 115 of C.P.C. and therefore, the question which is required to be decided is whether the order passed by the District Court while deciding revision application can be revised

by this Court in its limited jurisdiction under Section 115 of C.P.C.

11) Mr.Shah for the respondents took a preliminary objection to the effect that the second revision application from the revisional order of the District Court is not maintainable in view of the judgement of learned Single Judge of this Court rendered in the case of Parmar Bhimji Govind v. Heirs of Patel Velji Ramji, reported in 1996 (1) GLH 606. In the aforesaid case, the learned Single Judge of this Court has taken the view that when the District Court has exercised its power under Section 29 (3) of the Rent Act, revision under Section 29 (2) of the Rent Act is not maintainable, while deciding the said question it has been observed in paragraph 5 by this Court as under :

> "5. It may perhaps be urged that the present revision may be treated as one under Section 115 of CPC. Even this contention is not open to the petitioner in view of the decision of the Supreme Court in the case of Visheshkumar v. Shantiprasad (AIR 1980 SC 892). However, I do not propose to be hypertechnical and to reject the present revision merely on the ground of incompetency."

12) After examining the case on merits, the learned Single Judge came to the conclusion that on the basis of such evidence no exception can be found to the factual finding recorded by the District Court in the revision, that the original rent of the very same leased premises was Rs.4/- per month and therefore that is the standard rent of the premises. It has also been observed by the learned Single Judge in paragraph 8 of the judgement that the learned Counsel for the petitioner is unable to make out a case that this appreciation of evidence on the part of the District Court is such as would amount to perversity in law or represents a view which could not be taken by any other normal or prudent Court, after observing it, the learned Single Judge dismissed the revision application.

13) Mr.Shah after relying upon the said observation submitted that when this Court has taken the view that in view of the decision reported in AIR 1980 SC 892 second revision is not maintainable the present revision application is also required to be dismissed on the ground that the same is not maintainable.

14) Mr.Shah has further submitted that the judgement of the learned Single Judge reported 1996 (1) GLH 606 is followed in subsequent cases. Mr.Shah has also relied upon one such order passed by me wherein this Court has permitted the petitioner to convert the revision application filed under Section 115 of C.P.C., into a petition under Article 227 of the Constitution of India.

15) It is no doubt true that while deciding the case reported in 1996 (1) GLH 606 learned Single has made incidental observations that the second revision may not be maintainable, thereafter the Court has considered the matter on merits under Section 115 of C.P.C.

16) Mr.Vyas, learned advocate for the petitioner, however, submitted that so far as revision under Section 115 of C.P.C. is concerned, it is an independent proceeding. It is also submitted by him that while deciding aforesaid case, the learned Single Judge has made passing observations by relying upon the judgement reported in AIR 1980 SC 892.

17) Mr.Shah has also relied upon the judgement in the case of Heirs of Suryakant K.Shah v. Punjabhai Ranchhodbhai Patel reported in 1998 (2) GLH 453 , wherein this Court has taken the view that any order passed in the Execution proceedings under Section 47 of C.P.C., is not a decree and such order is not appealable before the District Court. In that case, in view of the amendment in Section 47 of C.P.C., the Court has found that the order in question is not appealable, as determination of any question cannot be said to be decree and therefore, appeal before the District Court was not competent and only revision under Section 115 was competent. The said observation is made by the Court in para 11 of the judgement.

18) It is not possible to appreciate as to for what purpose this judgement is cited by Mr.Shah. Firstly, we are not concerned with the order passed by the Executing Court under Section 47 of C.P.C. In the aforesaid case, order was passed by the Executing Court was challenged by way of appeal and on the said background, the Court has found that appeal was not competent as any order passed under Section 47 cannot be said to be decree and therefore, only the course open for the judgement debtor was to prefer revision against such order. Therefore, it is not necessary to examine aforesaid judgement in detail.

19) Mr.Shah, thereafter, has relied upon the judgement rendered in the case of Pranav Prabha Shivharlal & Anr. Vs. Dalichand Chhaganlal reported in 2001 (1) GLH 232 . In the said case, this Court has again reiterated the view that if the decision is rendered by the trial Court in exercise of jurisdiction under Section 29 (3) of the Act, a revision challenging the said decision under Section 29 (2) is not maintainable.

20) As stated above, it is required to be noted that the question, which is required to be decided here is different, as the question here is whether revision under Section 115 of C.P.C., is maintainable or not.

21) Even Mr.Vyas has frankly conceded that revision under Section 29 (2) is not maintainable and therefore, it is not necessary to discuss that judgement in detail, as the point involved here is absolutely different.

22) The learned Single Judge while deciding the case reported in 1996 (1) GLH 606, as referred to above, has made certain observations about the maintainability of the revision, after relying upon the decision reported in AIR 1980 SC page 892. So far as aforesaid case of Visheshkumar Vs. Shantaprasad, reported in AIR 1980 SC 892 is concerned, in that case powers under Section 115 of C.P.C., were delegated to the District Court. When the District Court decided revision under Section 115 of C.P.C., a further revision was preferred before the High Court. Considering the said background, in the aforesaid case, it is held that the second revision under Section 115 of C.P.C. before the High Court would not be maintainable. While deciding the said case, Supreme Court has held in paragraph 13 as under :

> "13. A mutually exclusive jurisdiction has been assigned to the High Court and the District Court within the terms of Section 115. To recognise a revisional power in the High Court over a revisional order passed by the District Judge would plainly defeat the object of the legislative scheme. The intent behind the bifurcation of jurisdiction - to reduce the number of revision petitions filed in the High Court - would be frustrated. The scheme would, in large measure, lose its meaning. If a revision petition is permitted to the High Court against the revisional order of the District Court arising out of a suit of a value less than Rs.20,000/- a fundamental contradiction would be

allowed to invade and destroy the division of revisional power between the High Court and the District Court, for the High Court would then enjoy jurisdictional power in respect of an order arising out of a suit of a valuation below Rs.20,000/-. That was never intended at all. AIR 1979 All 218 (FB) approved. "

23) In view of above decision, Mr.D.D.Vyas has submitted that in the aforesaid case reported in AIR 1980 SC 892, the Supreme Court was concerned with mere revisional powers under Section 115 of C.P.C., which were exercised by the District Court and under such circumstances it is held that the second revision under Section 115 of C.P.C., would not be maintainable.

24) Mr.Vyas has submitted that in a revision application under Section 115 of C.P.C., this Court can certainly call for the record and proceedings of the subordinate Court in order to examine the legality and validity of the order passed by the subordinate Court and the District Court being a subordinate Court to this High Court, revision under Section 115 of C.P.C., is maintainable before this Court and the ratio laid down by the Supreme Court in AIR 1980 SC 892, is not applicable to the facts of the present case.

25) Mr.Vyas has submitted that the District Court in the present case has exercised powers under Section 29 (3) of the Rent Act and the District Court being a subordinate Court to this Court, this High Court is entitled to exercise its revisional jurisdiction. To substantiate his say, Mr.Vyas has also relied upon the decision of the Apex Court in the case of Chhagan Lal Vs. The Municipal Corporation, Indore, reported in AIR 1977 SC page 1555, wherein it has been held by the Supreme Court in para 8 that in a revision under Section 115 of C.P.C., the High Court has got powers to revise the order passed by the courts below. In this regard specific observation is made in paragraph 8 of the judgement, which reads as under :

"8. The second contention is based on S.149 of the Madhya Pradesh Municipal Corporation Act, 1956. It provides that an appeal shall lie from the decision of the Municipal Commissioner to the District Court, when any dispute arises as to the liability of any land or building to assessment. Sub-section (1) of S.149 provides that the

> decision of the District Court shall be final. It was submitted that the decision of the District Court was therefore final and that the High Court was in error in entertaining a Revision Petition. This plea cannot be accepted for, under S.115 of the C.P.C. the High Court has got a power to revise the order passed by the Courts subordinate to it. It cannot be disputed that the District Court is a subordinate court and is liable to the revisional jurisdiction of the High Court. That leaves us with the last contention of the appellant that the High Court acted beyond its power as a court of revision. This point will have to be summarily dismissed as the question of want of jurisdiction of the High Court was not raised before the High Court and therefore cannot be allowed to be raised in this Court for the first time. The learned counsel for the appellant pleaded that the question involves total lack of powers of the High Court and this Court should hold that the order of the High Court is without jurisdiction. This Court has laid down the principles governing interference under S.115 of the C.P.C. in Baldevdas Shivlal v. Filmistan Distributors (India) (P) Ltd., (1970) a SCR 435 - (AIR 1970 SC 406), M/s. D.L.F. Housing and Construction Co. (P) Ltd. v. Sarup Singh, AIR 1971 SC 2324 and The Managing Director (MIG) Hindustan Aeronautics Ltd., Balanagar, Hyderabad v. Ajit Prasad Tarway, AIR 1973 SC 76. These cases have been referred to in the recent decisions of this Court in the Municipal Corporation of Delhi v. Suresh Chandra Jaipuria, AIR 1976 SC 2621 and the attention of the learned Judges of the High Court was drawn to the law declared by this Court. We consider it unnecessary to discuss the law on the subject over again as this appeal is liable to be dismissed on the ground that the point was not taken before the High Court and the discretion of this Court to interfere or not is beyond question."

26) It is argued by Mr.Vyas that this judgement was not brought to the notice of the learned Single Judge while deciding the case reported in 1996 (1) GLH 606 and, therefore, at that time passing observations have been made that second revision is not maintainable. He submitted that in view of this judgement of the Supreme Court, this revision is maintainable before this High

Court as the District Court is subordinate to the High Court.

27) Mr.Vyas has also relied upon the decision of the Supreme Court in the case of Shyamraju Hegde Vs. Vnkatesha Bhat and Ors. reported in AIR 1987 SC, 2323. In the said judgement, the Supreme Court has decided the question whether revision under Section 115 lies to the High Court from a revisional order made by the District Court under the provisions of the Karnataka Rent Control Act, 1961. In paragraph 11 of the said judgement, the Supreme Court has observed as under :

"11. On the analysis presented above, the two cases upon which the Full Bench has placed reliance are really not direct authorities on the point. We have already notice that in Krishnaji's case (ILR (1978) 2 Kant 1585) the earlier Full Bench had relied upon the decision of this Court in Chhagan Lal's case (AIR 1977 SC 1555). A three-Judge Bench in that case broadly dealt with a similar contention as arising here. At page 875 (of SCR) : (at page 1558 of AIR) of the Reports it is stated that :

"The second contention is based on S.149, Madhya Pradesh Municipal Corporation Act, 1956. It provides that any appeal shall lie from the decision of the Municipal Commissioner to the District Court, when any dispute arises as to the liability of any land or building to assessment. Sub-section (1) of S.149 provides that the decision of the District Court shall be final. It was submitted that the decision of the District Court was therefore final and that the High Court was in error in entertaining a revision petition. This plea cannot be accepted for, under S.115, C.P.C., the High Court has got a power to revise the order passed by the courts subordinate to it. It cannot be disputed that the District Court is a subordinate court and is liable to the revisional jurisdiction of the High Court........"

28) Mr.Vyas has submitted that this judgement was also not brought to the notice of the learned Single Judge, otherwise, such incidental observations would not have been made.

29) Mr.Vyas Shah has also relied upon the decision of the Apex Court in the case of ITI Limited Vs. Simens Public Communication Networks Ltd., reported in (2002) 5 SCC 510. It has been observed as under in paragraphs 8 and 19 of the said judgement.

"8. The question still remains as to whether when a second appeal is statutorily barred under the Act and when the Code is not specifically made applicable, can it be said that a right of revision before the High Court would still be available to an aggrieved party? As pointed out by Mr.Chidambaram, this Court in the case of Nirma Ltd. while dismissing an SLP by a reasoned judgement has held :

"[I]n our opinion, an efficacious alternate remedy is available to the petitioner by way of filing a revision in the High Court under Section 115 of the Code of Civil Procedure. Merely because a second appeal against an appellate order is barred by the provisions of sub-section (3) of Section 37, the remedy of revision does not cease to be available to the petitioner, for the City Civil Court deciding an appeal under sub-section (2) of Section 37 remains a court subordinate to the High Court within the meaning of Section 115 CPC."

"19. Revisional jurisdiction of a superior court cannot be taken as excluded simply because subordinate courts exercise a special jurisdiction under a Special Act, The reason is that when a special Act on matters governed by that Act confers a jurisdiction on an established court, as distinguished from a persona designata, without any words of limitation, then the ordinary incident of procedure of that court including right of appeal or revision against its decision is attracted. The right of second appeal to the High Court has been expressly taken away by sub-section (3) of Section 37 of the Act, but for that reason it cannot be held that the right of revision has also been taken away. See National Telephone Co. Ltd. V. Postmaster General and decision of the Privy Council in Adaikappa Chettiar v. Chandrasekhara Thevar which have been relied on by the Supreme Court in the case of National Sewing Thread Co.Ltd. v. James Chadwick and Bros. Ltd. In National Telephone Co.case

Viscount Haldane, L.C. observed thus :

> "When a question is stated to be referred to an established court without more, it in my opinion, imports that the ordinary incidents of the procedure of that court are to attach, and also that any general right of appeal from its decision likewise attaches."

30) Considering the aforesaid judgement, it is clear that so far as judgement reported in AIR 1980 SC 892 is concerned, the same was in connection with different situation altogether where the revisional powers were delegated to the District Court and when such powers were exercised by the District Court, second revision application under Section 115 itself is not maintainable. In the present case, it is an admitted fact that the District Court was exercising powers under Section 29 (3) of the Rent Act and it is not even disputed by any one that District Court is subordinate to this High Court, therefore, the High Court is entitled to exercise its revisional jurisdiction under Section 115 of C.P.C., against the order passed by the District Court exercising revisional powers under a different statute.

31) When the learned Single Judge has made observations as indicated above at the time of deciding the case reported in 1996 (1) GLH 606, these judgements were not brought to the notice of the learned Judge. Even otherwise, it cannot be said that the Court has laid down specific law in this behalf at the time of deciding aforesaid matter. So far as subsequent judgements are concerned, it has merely followed the view of the learned Judge while deciding the case reported in 1996 (1) GLH 606 and, it cannot be said that any specific provision of law is laid down while deciding the subsequent cases.

32) Considering the aforesaid judgement of the Supreme Court reported in (2002) 5 SCC 510, it is clear that the revision application under Section 115 is maintainable against the decision of the District Court under Section 29 (3) of the Rent Act, as the District Court is exercising revisional powers under different statue and as the District Court is subordinate to this Court its order is revisable under Section 115 of C.P.C.

33) Mr.Shah, at this stage, submitted that the view taken by the learned Single Judge in 1996 (1) GLH 606 is binding to another learned Single Judge and if this Court is of the view that the view taken by the learned Single

Judge in 1996 (1) GLH 606 is not correct then the matter is required to be referred to the Division Bench. In order to substantiate his say, Mr.Shah has relied upon the decision of the Supreme Court rendered in the case of Somabhai Mathurbhai Patel v. New Shorrock Mills, reported in 1983 GLH 273, wherein the Supreme Court has observed as under :

> "Decision of a Single Judge of a High Court is binding on another Single Judge of the same Court and in case of disagreement, matter should be referred to larger Bench."

34) Mr.Vyas pointed out that in the aforesaid case, the Supreme Court has not laid down any law and even the Special Leave Petition was dismissed at the time of making such observations. He submitted that even the learned Single Judge while deciding the case reported in 1996 (1) GLH 606 has also not laid down any law and has merely made some passing observations and the judgements cited before this Court were not cited before the learned Single Judge.

35) Mr.Vyas has relied upon the Full Bench Decision of this Court rendered in the case of Prakashkumar Prahladbhai Patel V. District Primary Education Officer, reported in 2000 (3) GLR 2467, wherein the Full bench of this Court has held that once a matter is settled by the Apex Court, there would hardly remain any scope for referring the same question for a decision by a Larger Benh. It is held that when the reference on a point, which is already decided by the Supreme Court would be a redundant reference. It is also held that the decision of the Supreme Court having binding precedents in view of Art.141 of the Constitution of India and in the cases decided by the Supreme Court there would remain no scope for its being decided by the High Court, and what remained to be done by the High Court was only to apply the law settled by the highest Court of the land to the fact before it. If the High Court had earlier decided a case in ignorance of the Supreme Court decision, that would be per incuriam decision.

36) Relying on the said judgement, Mr.Vyas submitted that even if it is presumed that the learned Single Judge while deciding the case reported in 1996 (1) GLH 606 has laid down any specific law, in view of subsequent Supreme Court judgements as well as earlier Supreme Court judgements, which were not brought to the notice of the

learned Single Judge, the said decision can be said to be per incuriam as the judgement declared by the Supreme Court is binding to all Courts and it is a law declared by the Supreme Court under Article 141 of the Constitution of India and if any decision is given contrary to binding Supreme Court judgement such decision is per incuriam and such decision is required to be ignored.

37) As stated earlier, it cannot be said that learned Single Judge has laid down any law on the subject as such, by making some passing observations. Even the learned Single Judge, himself has decided the matter under Section 115 of C.P.C. on merits. Even otherwise, when the position is made clear by the Supreme Court by its earlier as well as subsequent judgements, the law laid down by the Supreme court will be binding to this Court and in view of the clear proposition of law laid down by the Supreme Court, revision under Section 115 C.P.C. against the order passed by the subordinate Judge is maintainable before this Court.

38) So far as reference to the decision of the Supreme Court reported in 1983 GLH 273 is concerned, it was in connection with judicial comity, however, in the instant case, it is not necessary to refer the matter to the Division Bench, as, in my view, it cannot be said that the learned Single Judge has laid down any law on the subject. Even otherwise, by virtue of subsequent Supreme Court judgements, the ultimate law laid down by the Supreme Court is required to be applied and any decision given by the learned Single Judge contrary to the Supreme Court decision is per incuriam. In view of what is stated above, the matter is not required to be referred to the Division Bench.

39) Considering the matter from the aforesaid angle, I am of the view that revision under Section 115 of C.P.C., is maintainable against the decision of the District Court under Section 29 (3) of the Rent Act.

40) Mr.Shah, however, submitted that the decision of the Supreme Court reported in AIR 1977 SC 1555, AIR 1987 SC 2323 and (2002) 5 SCC 510 is concerned, the same are in connection with provision of other statute and not on Bombay Rent Act and since the learned Single Judge has dealt with Bombay Rent Act, itself, under which it has been held that second revision would not be maintainable, this Court should refer the matter to the Division Bench as the said ratio otherwise would be binding to this Court.

41) I do not agree with this submission of Mr.Shah. The law laid down by the Supreme Court is to the effect that the decision taken by the subordinate Court is revisable by the High Court under Section 115 of C.P.C. The question, therefore, is that whether the District Court is subordinate to the High Court and if yes, the order of the District Court can be revised under Section 115 of C.P.C. The said argument of Mr.Shah, therefore, is required to be ignored as such argument is contrary to the law laid down by the Supreme Court as referred above.

42) Considering the aforesaid aspect, this revision under Section 115 of C.P.C. is maintainable and accordingly, preliminary contention of Mr.Shah is negatived. Now, the matter is required to be examined on merits.

43) So far as factual aspect of the matter is concerned, the petitioner herein moved an application for fixation of standard rent under Section 11 of the Bombay Rent Act by way of Standard Rent Application No.1026/1976. The respondent took a stand before the trial Court that the applicant is not a tenant and therefore, the Bombay Rent Act is not applicable and therefore, the application for fixation of standard rent is not maintainable. The case of the opponent before the trial Court is that since furniture and fixtures is also let out to the applicant, Rent Act is not applicable as it cannot be said "premises" as per the definition given in Section 5 (8) of the Rent Act. In para 6 of the reply, the opponent took the stand that considering the nature of the premises and looking to the facilities given, at the time when the premises was first let to the applicant, rent was fixed at Rs.17,010/- and rent of furniture and fixtures is fixed at Rs.8505/- per month and it was agreed that since the applicant had started his new business, concession in rent was given to the applicant in the beginning. It is stated in the reply that the contractual rent is the proper rent and over and above payment of rent, the applicant is required to pay taxes separately to the Corporation. On the aforesaid grounds, the application for fixation of standard rent was resisted by the opponents herein.

44) Thereafter, after considering the oral and documentary evidence on record, the trial Court came to the conclusion that the premises, which is let out to the applicant is covered by the Bombay Rent Act and accordingly, provisions of Rent Act is applicable. After considering the evidence on record, the trial Court fixed

the standard rent of the demised premises at Rs.3,518.86 ps. per month and for furniture, fixtures and other equipments, standard rent is fixed at Rs.1,759.20 ps.per month. The trial Court accordingly fixed the standard rent of the premises at Rs.5278.06 ps. per month exclusive of taxes.

45) The said order of the trial Court was carried further by the present opponent by filing a Civil Revision Application under Section 29 (3) of the Bombay Rent Act, as such order is not made appealable under Section 29 of the Rent Act.

46) The learned District Judge, while deicing revision application, came to the conclusion that the premises let out to the applicant herein cannot be said to be "premises" as defined under the Rent Act. The learned District Judge relied upon the decision reported in AIR 1975 SC 1758 as well as the decision reported in AIR 1965 SC 716, wherein the Supreme Court has considered the definition of word "accommodation" as contained in U.P. (Temporary) Control of Rent and Eviction Act. The learned District Judge has also considered the decision of the Division Bench of this Court reported in 1961 GLR 102, wherein this Court has held that factory is not "premises" as per the definition given in the Bombay Rent Act and the machinery forming part of the factory cannot be regarded as fittings affixed to the building for the benefit or enjoyment of the building.

47) The learned District Judge in para 77 of the judgement has found that the committee of the opponents had negotiated with the applicant and had recommended that a Hotel and revolving restaurant with furniture and kitchen equipments, etc., be given to late Shri Daviyarwala, wherein the amount of rent is fixed at Rs.1.25 per sq.ft. and concession was given initially for 36 months and accordingly, it was resolved by the committee to let out hotel along with revolving restaurant to the father of one of the partner of the applicant firm.

48) The district Judge accordingly found that the hotel, restaurant etc., fully equipped with furniture, fixtures has been let out at the rate of Rs.1.25 per sq.ft. with scaling down telescopic rate of remission as finding place on page 10 of the Lease Deed. The district Judge found that the said hotel is fully equipped with furniture necessary for running the hotel and accordingly, the father of the applicant was given the said premises for running hotel as he was having wide

experience of running hotels.

49) Accordingly, the District Court found that what was let out was facility for running hotel business or in other words, it can be said that it was the business that was let out. This observation is made by the District Judge in paragraph 82 of the judgement. Accordingly, the district Court has found that the premises in question cannot be said to be premises as defined in the Rent Act. The District Court has also found that the right for fixation of rental charges of the rooms as well as supply of tables etc., including fixing salary of the staff members was reserved by the landlord. Under these circumstances, the district judge has found that the landlord being unable to run the hotel he had given the same on rent and while doing so, the landlord has retained control and fixation of various charges for the purpose of effectively running the hotel business. The district Judge has found that the transaction is that of letting out a business and not a building. Considering the aforesaid aspect of the matter, the learned district Judge found that the premises in question is not governed by the Rent Act and, therefore, there is no relationship of landlord and tenant between the parties and under these circumstances, it is found that the application for fixation of standard rent is not maintainable as such application can be entertained only if the relationship of tenant and landlord exists and not otherwise.

50) The learned District Judge has alternatively also fixed standard rent at Rs.1.25 ps. per sq.ft. The learned District Judge has also given time upto 30th June, 1988 to the applicant to pay up the arrears of standard rent. The fixation of standard rent is, of course, an alternative finding as the Court came to the conclusion that the premises is not governed by the Rent Act. The said order of the District Court is challenged by the original applicant by filing this Revision Application, which is to be treated as a revision under Section 115 of C.P.C.

51) At the time of admitting this matter on 8-12-1988, both the sides have agreed before this Court that during the pendency of this revision application, the applicant shall deposit regularly an amount of Rs.25,000/- as rent, on or before 10th of every month. It is pointed out by Mr.Vyas that this amount is deposited before the trial Court every month.

52) Mr.Vyas for the applicant submitted that the District Court has committed an error in coming to the

conclusion that the Rent Act is not applicable. He submitted that as per the rent note Exh.63, it is clear that the premises was let out to the applicant and the quantum of rent is also prescribed in the said lease deed which is finding place at page 142 of the compilation. The said lease deed provides that duration of the lease deed is for ten years. As per the clause-2 of the said lease deed, the lessee has agreed to pay monthly rent subject to concession as mentioned in the leased deed and it is also agreed that during the term of lease deed they will pay municipal taxes, Government taxes, Education cess etc., and that they will not transfer, mortgage, sublet their tenancy rights in any manner without obtaining consent of the lessor. Other clauses regarding renewal of lease after ten years are also there in the lease deed. It is also provided that the rates for lodging and boarding will be fixed by mutual consent of lessee and the managing committee of the lessor. It is also provided in the lease deed that in case any dispute arise between the parties, that dispute will be referred to two arbitrator, one appointed by each party and in case of disagreement by an empire appointed by them.

53) Subsequently, the lessee preferred an application under Section 11 of the Rent Act for fixation of standard rent.

54) Mr.Vyas for the applicant has argued that the learned District Judge has not considered various documents on record as well as admissions made by the landlord in his evidence and that the learned District Judge has misread the documentary evidence on record. He submitted that the learned District Judge while exercising his revisional power has interfered with the finding of fact recorded by the trial Court and has also considered the question of applicability of the Rent Act but while doing so important documents have not been taken into consideration. Mr.Vyas has submitted that looking to the nature of the lease deed, it is clear that the Rent Act is applicable between the parties and there is a relationship of landlord and tenant between the parties. Mr.Vyas has further submitted that the learned District Judge has committed jurisdictional error by coming to the conclusion that the Rent Act is not applicable and, if the Rent Act is not applicable, the court has no power to decide standard rent application and in that view of the matter, revision under Section 115 of C.P.C., is maintainable before this Court and this Court can interfere with the said finding of the district Court since the question of jurisdiction is involved.

55) Mr.Vyas has submitted that since the learned District Judge while exercising revisional powers has not considered various documents, this Court may consider all those documents in the present revision application or may send the matter back to the learned District Judge for taking into account the entire evidence on record.

56) Mr.Vyas has also submitted that looking to the documentary evidence, it is clear that the premises was let out to the tenant for the purpose of running a hotel and, therefore, the provision of the Rent Act is applicable. He submitted that even rent of hotel building and rent of furniture and fixtures is separately fixed in the lease deed. At this stage, reference is required to be made to the definition of "premises" under Section 5 (8) of the Act, which provides as under :

"Section 5 (8) defines premises as follows :-

"(8) 'premises' means-

(a) any land not being used for agricultural purpose,
(b) any building or part of a building let or given on licence separately (other than a farm building) including -

(i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,
(ii) any furniture supplied by the landlord for use in such building or part of a building,
(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house".

57) Mr.Vyas has also relied upon the decision of the Supreme Court in the case of Natraj Studios (P) Ltd., v. Navrang Studios and Anr., reported in AIR 1981 SC 537. In the said judgement, the Hon'ble Supreme Court has considered the provisions of Bombay Rent Act as well as the definition of premises as provided in Section 5 (8) of the Rent Act. In the aforesaid case, the appellant before the Supreme Court entered into an agreement with one Navrang Studios by which the latter granted the former the "leave and licence" for the use of their studios and other premises described in list-I annexed to the agreement. The lesser thereafter, terminated the leave and licence agreement and called

upon the lessor to hand over the possession of the studios. The lessee, thereafter, filed a declarative suit in the Court of Small Cause, Bombay praying for a declaration that the plaintiff was a monthly tenant of the two studios and all other structures and open land covered by the agreement and for fixation of standard rent and other reliefs. In the aforesaid case, the plaintiff had also filed an application under Section 33 of the Arbitration Act before the High Court that the arbitration clause in the leave and license agreement is invalid and such application was dismissed by the High Court, on the ground that it has no jurisdiction to determine the alleged rights, if any, of the appellant as tenant. Thereafter, the lessor filed an application under Section 8 of the Arbitration Act praying for appointment of an arbitrator to decide the dispute and differences between the parties under the leave and licence agreement. The High Court allowed said application and appointed a sole arbitrator. In the meanwhile, appeal filed against the order of the learned Single Judge was dismissed by the Division Bench of the Bombay High Court as it was not maintainable under Section 39 of the Arbitration Act. The matter was, thereafter, carried before the Honourable Supreme Court. The Supreme Court after considering the definition of premises, as well as after considering the provisions of Section 6 (1) of the Rent Act, observed as under in para 12 and 15 :

"12. Even a building so constructed or designed as to be capable of being used for running a certain business only is 'premises' within the meaning of S.5 (8) of and S.5 (8A) and does not cease to be premises merely because the building is capable of being used for the particular business only or merely because the machinery or equipment must necessarily go along with the building if it is to be used for the business. A licensee is not really a tenant but is a person deemed to be a tenant because of Sec.15 A of the Act. A building in which a person is licensed to run a business is "premises" within the meaning of S.5 (8) and S.5 (8A), to which part II of the Act is made applicable by Section 6 (1) notwithstanding the fact that the building is not let as such."

"15. At this juncture we may refer to the terms of the agreement. The agreement provided for (1) "leave and licence in respect of studios

Nos.2 and 3 duly sound proofed and electrified and other premises more particularly described in list No.1 hereto annexed situated at 194 Kurla Road, Andheri, Bombay, on a monthly compensation of Rs.250/- including sound proofing and electrification" and (2) "leave and licence in respect of the machineries, lights, equipments, setting and property material etc. mentioned in list No.2 hereto annexed on a monthly compensation of Rs.7500/-". The two licences, it was stipulated, were to be "in force and operation simultaneously and together" and "not subject to divisibility". The licensees were entitled to carry on their work of producing motion picture films in the studios and the machineries and other equipments were to be used for that purpose only. The licensees were also entitled to permit the use of the studios and other premises, machineries and other articles temporarily, by others, whomsoever they liked during the subsistence of the licences for the purpose of producing motion pictures only. Property tax and other taxes were to be borne and paid by the licensors while the licensees were required to pay for the consumption of electricity and water. During the subsistence of the licenses, the licensees were not to part with the possession of the studios and other premises, machineries and equipments. The studios and other premises, machineries and equipments were to be used by the licensees in a prudent manner. The agreement further stipulated that no tenancy rights were to be understood as having been created by the licensors in favour of the licensees. The interest created was that of licensees only. The licensees were to carry on their business of motion picture films production in the licensed premises under the name and style of Natraj Studios (P) Ltd. The agreement is thus seen to be a composite agreement which gave 'leave and licence' (1) to use the studios and other premises for producing films and (2) to use the machinery and equipment for the same purpose. The licensors parted with possession of the Studios and the machinery in favour of the licensees. Notwithstanding the fact that the agreement was a composite one and the two licences were to operate 'simultaneously and together', there could be no gainsaying the fact that the Studios and other premises were certainly given on licence for the business of

producing films. The parties themselves were conscious that the licence granted by the licensor in favour of the licensee was in respect of the Studios and other premises and that there was even a risk the licence being construed as a leased. So they were anxious, at that stage, to emphasise that what was granted was a licence and not a lease. That was obviously to circumvent the provisions of the Bomaby Rents, Hotel and Lodging House Rates Control Act, 1947. It was apparently thought that the sophisticated description of the transaction as a 'licence ' instead of a lease would take it out of the clutches of the Bombay Rents, Hotel and Lodging House Rates Control Act. It was precisely the type of agreement that forced the hand of the legislature to intervene and amend the Act by introducing S.15 ! by which such licensees were deemed to be tenants of the landlord."

58) The Court further found that the Rent Act is a legislation with a social objective of protecting the tenants against the harassment by landlords in various ways and the scheme of the Act shows that the conferment of exclusive jurisdiction of certain Courts is pursuant to the social objective at which the legislation aims and there is a legislative mandate which requires certain kinds of disputes to be settled by the special Courts constituted by the Act. It follows that the arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognised by the Court of law.

59) Relying upon the aforesaid judgement, Mr.Vyas submitted that looking to the nature of the transaction, in the instant case, and considering the clauses of the lease deed, it is clear that provisions of the Rent Act is applicable.

60) Mr.Vyas has also relied upon the judgement of the learned Single Judge rendered in the case of Minor Anish Achyut Chinubhai v. Nanikram Sobhraj Mills Pvt.Ltd., reported in 1992 (2) GLR 1133. After considering various judgements of the Supreme Court as well as of this Court in 1961 GLR 102, on which the District Court has relied, learned Single Judge has observed in para 14, 15, 16 and 18 as under :

"14. The decision of the Supreme Court in

Uttamchand v. S.M.Lalwani, (AIR 1965 SC 716) is clearly not applicable to the facts of the present case. In that case before the Supreme Court, a Dal Mill which was in a running condition was leased out for the purpose of running it as a factory. Not only that, but there were building on the land and machinery was also fixed in the building and the dominant intention of the parties was to transfer the right to run the factory as a Mill. In this situation, it was held that the subject-matter of the lease was not the buildings, but it was the running Mill which was the subject-matter of the lease and it was because the running Mill was intended to be let out that the buildings were inevitably let out along with the Mill. As against the facts of the case before the Supreme Court, the facts in the case before us are that the lessor has leased out to the lessee not any running Industry or Mill but has clearly let out lands though, of course, with some buildings thereon. It is true that in the lease-deed in our case, it is mentioned that the property was demised to the lessee for being used by the lessee "for silk, rayon and cotton weaving, dyeing and printing factory". There was, however, no machinery whatsoever on the demised property for starting or running any industry. There was no industry or factory for manufacturing in existence, on the demised property at the time of creation of the lease. The only thing which can be said and said correctly is that the land and buildings were taken on lease by the defendant for installing its own machinery to manufacture textiles and to sell the same for earning profits. By no stretch of imagination, it is possible to say that any right to run a running industry or factory was contracted out or leased out or framed out to the lessee. The citation of the above authority, therefore, does not render any assistance to the learned Advocate General in contending that the lease in the present case would not be governed by the provision of Sec.6 (1) of the Rent Act.

15. Similarly, the next decision of the Supreme Court cited by the learned Advocate General, viz., Inandas v. Anant Ramchandra Phadke (AIR 1982 SC 127) is also of no assistance in resolving the controversy arising in the present case. That was a case in which the

provision of Sec.106 of the Transfer of Property Act was required to be considered and it is in that context that the Supreme Court has considered as to whether a lease for running a flour mill was a lease for "manufacturing purpose" within the meaning of that expression in Sec.106 of the Transfer of Property Act. So far as the Transfer of Property Act is concerned, it makes departure in the case of a lease for manufacturing purpose and also a lease for agricultural purpose and lays down that termination of such lease would, subject to the contract to the contrary, require six months' notice as opposed to 15 days' notice in the case of lease for other purposes. In the present case, we are not concerned with the question as to what should be the duration of notice for the purpose of terminating under the provision of Sec.106 of the Transfer of Property Act, a lease created for manufacturing purpose. We have to interpret Sec.6 (1) of the Rent Act and especially the word "business" occurring therein keeping in view that the object of the Rent Act and no consideration which would be relevant for interpreting Sec.106 of the Transfer of Property Act will be relevant for the purpose of construing Sec.6 (1) of the Rent Act.

16. In the case of Osman Fakir Mahomed Divecha v. Ali Akbar Javad Sadkay & Anr., (AIR 1970 SC 1893), open land situated in the Bombay Suburban District was leased out for "constructing buildings of every description howsoever" and the question was whether the land leased in the said case was "premises" within the meaning of Sec.6(1) of the Rent Act. It was held that since the purpose of demising land was not let out for the purposes mentioned in Sec.6 (1) of the Rent Act, the demised land in that case was not "premises" within the meaning of Sec.6 (1) of the Act. What we have to consider is whether, in the present case, the lease is not for "business", even though it clearly stipulates that land and some buildings standing thereon were leased out to the defendant for the purpose of setting up by it (defendant) a textile mill and manufacturing silk, rayon or cotton cloth. This question was not there before the Supreme Court and it is neither considered nor decided by the Supreme Court.

18. None of the aforesaid decisions cited by the learned Advocate General deals with the question which arises for determination in the present appeals. As already stated by me above, the word "business" as occurring in Sec.6 (1) of the Rent Act has to be interpreted keeping in view the object of the legislature and that object being clearly to prevent exploitation by the landlords taking advantage of the acute scarcity of accommodation, I have no hesitation in concurring with the view taken by the learned Judge that the word "business" must receive sufficiently wider meaning so as to embrace within its sweep manufacturing activity undertaken for the purpose of earning profit."

61) Mr.Vyas further submitted that the District Court at the time of deciding revision application has not considered the fact that there is a documentary evidence on record in the form of notice given by the landlord dated 26th August, 1976, which is at Exh.62, wherein it is stated that "by not paying the amount of rent you have committed breach of lease and therefore, your tenancy is liable to be terminated". The said notice was addressed to the original lessee Davierwala. It is stated in the said notice that the lessee has taken lease premises in the said building description of which is given in the notice along with furniture and kitchen equipments and other articles which are mentioned in Schedule-2 of the said notice. The said lease deed is for ten years and as per the term of the lease, lessee was required to pay monthly rent from month to month over and above the rent, he is required to pay municipal taxes, Government taxes, education cess etc. and that by not paying the amount in question, he has committed breach of lease deed and therefore, his tenancy is liable to be terminated and accordingly it is stated in the notice that "my client intend to terminate your tenancy and you are hereby called to hand over the possession of the premises described in Schedule-1 and furniture and equipment described in Schedule-2 on 31-3-1977".

62) Mr.Vyas has submitted that in view of this notice issued by the lessor, the lessor himself has accepted the lessee as tenant of the premises and accordingly, the notice is given in consonance with the provisions of the Bombay Rent Act, otherwise, there is no question of his terminating the lease and demanding the amount of arrears of rent. It is submitted that even in the lease deed, it is clearly provided that relationship of lessor and

lessee and that the landlord himself has accepted the lessee as tenant of the suit premises.

63) Mr.Vyas submitted that even subsequently landlord himself has filed the suit under the Bombay Rent Act for possession of the suit premises. Mr.Vyas has also further submitted that even in evidence of the witness of the landlord one Dinkarrai Pranlal at Exh.74-manager of the opponent, the manager has clearly stated that the tenant was given premises on lease basis and subsequently the partner of the firm had executed a rent note on 5-4-1974 which is at Exh.63. Mr.Vyas further submitted that the said witness has stated that the rent was fixed at Rs.1.25 per sq.ft., which included the rent of furniture, fixtures etc. He has also referred to the rent note in his evidence. Mr.Vyas has also relied upon paragraph 5 of the cross-examination of the said witness, wherein he has stated that the Corporation was charging municipal taxes on the basis of rent at the rate of Rs.5,178/- per month and when the rent was increased the Corporation is charging higher taxes on increased rent. Mr.Vyas has submitted that this part of the evidence is not taken into consideration by the District judge and accordingly, he has misread the evidence on record.

64) It is also submitted by Mr.Vyas that there is documentary evidence at Exh.56 and 57, which is receipt of rent given by the landlord to the applicants, wherein in the particulars, it is mentioned that amount of Rs.2,369.80 ps. is received towards rent of furniture and equipments and Rs.5278.30 ps. is received towards rent of hotel building.

65) It is submitted that considering the documentary evidence as well as considering the lease deed as well as considering the oral evidence of the landlord himself, which has not been referred by the District Judge, it is clear that relationship of tenant and landlord is established and, therefore, the trial Court was justified in deciding standard rent application by fixing standard rent.

66) So far as application of the Rent Act is concerned, prima facie, it appears that considering the observation of the Supreme Court in AIR 1981 SC 537 as well as of this Court, as well as considering the proviso to Section 5 (8) and Section 6 (1) of the Rent Act, it appears that the premises was let out to the tenant with furniture, fixtures etc., for running hotel business.

67) Considering the matter from aforesaid angle, in

my view, the District Judge has committed an error in coming to the conclusion that the provisions of the Rent Act is not applicable to the premises in question.

68) It is required to be noted that as pointed out by Mr.Vyas while examining the said question, the learned District Judge has not considered the various receipts issued by the landlord, as well as the oral evidence in which so called admissions have been made by the landlord. Under these circumstances, without examining all those documents, the District Judge has reversed the finding of the trial Court by coming to the conclusion that the provision of the Rent Act is not applicable.

69) Considering the said aspect, instead of considering all these evidence here, it would be just and proper to send the matter back to the District Court to give appropriate finding again after considering the evidence as indicated in this order.

70) At this stage, Mr.Shah submitted that this being a revision under Section 115 of C.P.C., even if it is presumed that the judgement of the District Court is contrary to law then also revision under Section 115 would not be maintainable unless there is a jurisdictional error committed by the District Court. It is no doubt true that the powers of the District Court under Section 29 (3) is wider than revisional powers of this Court, as the District Court can even correct the error of law while this Court is required to see whether any jurisdictional error is committed by the subordinate Court. In my view, the question regarding applicability of the Rent Act is a question, which touches the jurisdiction of the Court and for deciding the issue even if a document is not taken into consideration, in a given case, it amounts to a jurisdictional error.

71) Mr.Vyas has submitted that since on interpretation of document, the Court has found that the Rent Court has no jurisdiction and therefore, such interpretation of document may attract the provisions of Section 115 of C.P.C., as it can be said to be a jurisdictional error. If any mistake is committed by the Court in interpreting any document, which has bearing in connection with the question of jurisdiction of the Court, the provisions of Section 115 of C.P.C., can be said to have been attracted.

72) To substantiate his say, Mr.Vyas has relied upon the decision rendered in the case of Roshan Lal Mehra v. Ishwar Dass reported in AIR 1962 SC 646. The relevant

observation of the Apex Court is finding place in paragraph 17, which is as under :

"17. It clear from the orders of the Rent Controller and of the District Judge in appeal that the question whether the second floor was newly constructed or not was really a question of fact, though undoubtedly a jurisdictional fact on which depended the power of the Rent Controller to take action under S.7A. If the Rent Controller had wrongly decided the fact and assumed jurisdiction where he had none, the matter would be open to reconsideration in revision."

73) Mr.Vyas has also relied upon the decision rendered in the case of Vinod Kumar Arora v. Smt.Surjit Kaur reported in AIR 1987 SC 2179, wherein the Supreme Court has considered the powers of the Court under Section 115 of C.P.C., and it is observed by the Supreme Court that when there are concurrent findings of fact, interference with it in revisional jurisdiction is justified when the findings suffer from inherent defects. It has been observed in paragraph 9 and 12 as under :

"9. The High Court is fully justified in rejecting the finding of the Rent Controller and the Appellate Authority, even though it is a finding of fact, when both the Authorities have based their findings on conjectures and surmises and they have lost sight of relevant pieces of evidence which have not been controverted.

12. Learned Counsel for the appellant repeatedly contended that when the Rent Controller and the Appellate Authority have rendered concurrent findings of fact, the High Court was not entitled to disregard those finding and come to a different conclusion of its own and cited in this behalf the decision of this Court in Hiralal Vallabhram v. Sheth Kasturbhai Lalbhai, AIR 1967 SC 1853. The proposition of law put forward by the Counsel is undoubtedly a well settled one but then it must be remembered that the rule would apply only where the findings have been rendered with reference to facts and not on the basis of non-existent material and baseless assumptions. In this case when the Government quarters occupied by the respondent consists of a single bed room alone, it has been

> construed as comprising of three bed rooms; when the respondent wanted the entire house to be vacated by the two tenants so that she and her family members can occupy the whole house, the Authorities have proceeded on the basis that the respondents was (sic.) seeking recovery of possession of one hall alone for her residential needs; when the respondent had not demanded increase of rent, even as per the admission of the appellant, the Authorities have proceeded on the basis that the respondent was not likely to forego the income derived by way of rent for the hall etc. In such circumstances it is futile to say that the Rent Controller and the Appellate Authority have rendered their findings on the basis of hard and irrefutable facts. On the contrary the findings have been rendered on either non-existent or fictitious material. They cannot therefore be construed as findings of fact and once they cease to be findings of fact, they stand denuded of their binding force on the appellate or revisional court."

74) Under these circumstances, in my view, even in its limited jurisdiction this Court can certainly consider whether the District Court has committed any jurisdictional error or failed to exercise its jurisdiction. In my view, by not considering the relevant documents, which has direct bearing regarding jurisdiction of the District Court, the District Court can be said to have committed jurisdictional error, which can be corrected by this Court.

75) At this stage, Mr.Shah submitted that even if it is presumed that the relationship of landlord and tenant is established, then also the applicant is required to deposit taxes and since long the applicant has not deposited amount of taxes and there is a large accumulation of taxes, and there is a apprehension of property being put to auction by the Municipal Corporation.

76) Mr.Vyas, on the other hand, has submitted that since the landlord has not accepted the applicant as tenant, the tenant is paying rent, which is fixed at the rate of Rs.25,000/- per month by this Court and he submitted that in case the landlord accepts the applicant as tenant, he is ready to pay the taxes.

77) So far as payment of tax is concerned, it is

required to be noted that the trial Court has fixed the standard rent exclusive of taxes and the said part of the order is not challenged by the applicant. The revision is preferred by the landlord against the order of the trial Court fixing particular amount as standard rent. However, even the question of payment of permitted increases or taxes can be examined by the Court in an application under Section 11 of the Bombay Rent Act, as the trial Court has powers and in a given case, the Court can decide the dispute in connection with permitted increases also. Since the trial Court has already fixed the standard rent, exclusive of taxes, in my view, nothing further is required to be considered in this matter, especially when the landlord has preferred the revision application only against the order fixing the quantum of standard rent.

78) Mr.Vyas however pointed out that the applicant has filed substantive civil suit for declaration that he is not liable to pay the taxes and for restraining the Municipal Corporation from recovering taxes directly from the tenant with a prayer that the said amount of tax may be recovered from the landlord directly.

79) However, as stated above, the trial Court at the time of allowing the standard rent application has fixed standard rent exclusive of taxes and since this Court is not called upon to examine that question, I am not expressing any further opinion on this point regarding payment of taxes, as substantive civil suit is pending in this connection at the instance of the present petitioner. It is required to be noted that since the question which is required to be decided in the present revision application is in connection with jurisdiction of the Court, in the matter of deciding standard rent application and applicability of the Rent Act, it would not be proper to throw away this Civil Revision Application on the ground that the tenant has not paid taxes, however, it will be open for the landlord to take appropriate proceedings in accordance with law for the same.

80) At this stage, Mr.Vyas has submitted that the applicant is ready to pay the arrears of taxes if the landlord is ready to accept him as tenant. He submitted that he is making this statement without prejudice to the rights and contentions of his client in the substantive civil suit, which is filed by his client.

81) On the other hand, Mr.Shah has submitted that so far finding of the trial Court regarding fixation of

standard rent exclusive of taxes is concerned, the same has become final as the present petitioner has not challenged the said finding. It is no doubt true that the said finding of the trial Court is not challenged by the petitioner herein and therefore, there is some substance in the argument of Mr.Shah, however, this Court is not required to adjudicate that dispute in the present Civil Revision Application by expressing any opinion, especially when a substantive civil suit is pending before the trial Court in this behalf.

82) Considering the aforesaid aspect of the matter, it is just and proper to send the matter back to the District Court to decide the revision application of the respondent afresh after taking into consideration entire oral and documentary evidence and as per the observations made by this Court in the present order. Mr.Vyas has fairly agreed that till the revision is decided again, the tenant will continue to deposit Rs.25,000/- as rent as per the order of this Court and such deposit will be subject to the final outcome of the revision, which is to be decided by the District Court. Since the proceedings are very old, the District Court is directed to dispose of the said revision application after remand by the end of March, 2005.

83) At this stage, Mr.Shah submitted that since the respondent would like to approach the Honourable Supreme Court, this order may be stayed for some time. In view of the request of Mr.Shah, operation of this order is stayed for a period of two months from today. However, if no orders are obtained by the respondents from the Honourable Supreme Court by that time, the District Court shall proceed with the matter after two months from today and may try to dispose of the same by 31st March, 2005.

84) It is clarified that the observations made in this order are made only for the purpose of deciding present Revision Application and the same will have no bearing at the time of deciding the revision again before the District Court and the District Court may decide the matter in accordance with law after considering the evidence on record.

85) Record and Proceedings to be sent back to the District Court forthwith.

86) Accordingly, this Civil Revision Application is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

87) In view of above order, no order on Civil Application No.2575/2002.

(P.B.Majmudar,J.)
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